IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

STACEY FASONE and PAUL B. FASONE,

Plaintiffs,

-against-

JM & AM REALTY HOLDINGS, LLC, THE AMERICAN NATIONAL RED CROSS, THE AMERCIAN RED CROSS ON LONG ISLAND, and THE INCORPORATED VILLAGE OF MINEOLA,

Defendants.

Civil Action Number: ____________

NOTICE OF REMOVAL

DOCUMENT ELECTRONICALLY FILED

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK:

Defendant-petitioner AMERICAN NATIONAL RED CROSS (s/h/a "THE AMERICAN RED CROSS" and "THE AMERICAN RED CROSS ON LONG ISLAND"), by their undersigned attorneys, respectfully represent as follows:

I. Service of the Summons and Complaint

1. Upon information and belief, on or about May 2, 2017, a Summons and Complaint was filed against AMERICAN NATIONAL RED CROSS (s/h/a "AMERICAN RED CROSS" and "THE AMERICAN RED CROSS ON LONG ISLAND"), JM & AM REALTY HOLDINGS, LLC, and THE INCORPORATED VILLAGE OF MINEOLA in the Supreme Court of the State of New York, County of Nassau, by plaintiffs STACEY FASONE and PAUL B. FASONE. The suit is entitled *Fasone v. JM & AM Realty Holdings, LLC, et al.*, Index No. 603786/2017.

2. The Summons and "Verified" Complaint are the initial pleadings setting forth the claim for relief upon which this action is based. Defendant AMERICAN NATIONAL RED CROSS first received a copy of the Summons and "Verified" Complaint on or about May 10, 2017. A copy of the Summons and "Verified" Complaint are collectively attached as Exhibit "A."

3. Plaintiff's "Verified" Complaint purports to set forth a cause of action arising in Nassau County, involving allegations of personal injuries following a fall on a public sidewalk allegedly operated and maintained by the defendants. The alleged accident occurred on June 6, 2016. Plaintiff Stacey Fasone alleges injuries and damages as a result, and Plaintiff Paul Fasone alleges a derivative claim for loss of consortium.

4. Defendant American National Red Cross first received notice that this case was removable on May 10, 2017 (the aforesaid date of its receipt of the Summons and "Verified" Complaint), at which time it was determined that federal subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441 (a) and (b) exists over defendant-petitioner AMERICAN NATIONAL RED CROSS by virtue of 36 U.S.C. § 300105 (a)(5).

5. In accordance with Title 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt of the Summons and "Verified" Complaint by the defendant, AMERICAN NATIONAL RED CROSS, which received a copy of the Summons and "Verified" Complaint on or about May 10, 2017.

II. Jurisdictional Basis for Removal

6. Federal subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441 (a) and (b) exists over defendant by virtue of 36 U.S.C. § 300105 (a)(5), a provision of the AMERICAN NATIONAL RED CROSS' federal charter granting it the power to "sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States."

7. The United States Supreme Court has construed the "sue-and-be-sued" provision of the AMERICAN NATIONAL RED CROSS' charter as conferring "original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending." *See American National Red Cross v. S.G.*, 505 U.S. 247, 248, 112 S. Ct. 2465, 2467 (1992).

III. Parties

8. Petitioner-defendant AMERICAN NATIONAL RED CROSS is informed and believes that the plaintiffs, STACEY FASONE and PAUL FASONE, is now, and was at the time of filing of the Summons and "Verified" Complaint in this action, and at all intervening times, residents of the State of New York.

9. Petitioner-defendant AMERICAN NATIONAL RED CROSS is now, and was at the time of the filing of the Summons and "Verified" Complaint in this action, and at all intervening times, a corporation organized by act of the United States Congress in the District of Columbia, with its principal place of business in the District of Columbia.

10. Petitioner-defendant AMERICAN NATIONAL RED CROSS desires to remove this action to this Court and therefore submits this Notice of Removal, along with Exhibit "A," in accordance with 28 U.S.C. §§ 1441 (a) and 1446.

11. Defendant THE INCORPORATED VILLAGE OF MINEOLA, consents to removal. *See* Declaration of Brian McElhenny attached as Exhibit "B" respectively.

12. Upon information and belief, Defendant JM & AM REALTY HOLDINGS, LLC, intends to consent to removal.

13. Petitioner reserves the right to amend or supplement this Notice of Removal.

14. Pursuant to 28 U.S.C. § 1446 (d), a copy of this Notice of Removal is being filed with the Clerk of the Supreme Court of the State of New York, County of Nassau.

15. Pursuant to 28 U.S.C. § 1446 (d), petitioner-defendant is providing written notice to the plaintiffs, STACEY FASONE and PAUL FASONE, through their counsel Corey B. Kaye, Kaye and Lenchner, at the address provided on plaintiff's "Verified" Complaint.

WHEREFORE, AMERICAN NATIONAL RED CROSS, the defendant-petitioner in the action described herein, currently pending in the Supreme Court of the State of New York, County of Nassau, Index Number 603786/2017, respectfully requests that the action be removed to this Court.

Dated: New York, New York
June 9, 2017

SEDGWICK LLP

By: s/ J. Gregory Lahr

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